

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.49 OF 2006

Dudhganga Vikas Seva Sanstha
and Anr. .. Petitioners

Versus
Dist.Collector, Kolhapur
and Ors. .. Respondents

WITH

WRIT PETITION NO.58 OF 2006

Yashwant Oil Seeds Purchase &
Sales Sangh Ltd. & Ors. .. Petitioners

Versus
District Collector Kolhapur
and Ors. .. Respondents.

Mr.A.V.Anturkar with S.B.Deshmukh for petitioners
Mr.Y.S.Jahagirdar, Senior Advocate with Amit
Borkar for respondent No.1
Mr.M.L.Patil for respondent No.2
Mr.A.H.Palekar, A.G.P. for State.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 12th January 2006.

ORAL ORDER:-

. Mr.Anturkar, learned Counsel appearing

for petitioners states that issue raised in both petitions is identical and, therefore, they be taken up together and disposed of by a common order.

2. Mr.Jahagirdar, learned Senior Counsel appearing for some of the persons, who had appeared before the District Collector, seeks to intervene and that intervention is not objected by Mr.Anturkar.

3. Petitioners are members of a Federal Society viz., Kolhapur Dist.Central Cooperative Bank. There is no dispute that the term of Board of Directors of this Bank would expire some time this year and, therefore, elections to the Board are due. It is also not disputed that the said Federal Bank is a specified society within the meaning of the said term as appearing in section 73G of the Maharashtra Cooperative Societies Act, 1961 and, therefore, Maharashtra Specified

Cooperative Societies elections to Committee Rules, 1971 would apply for the purpose of the said elections.

4. The issue raised in this petition under Article 227 of Constitution of India while challenging the order of the Dist. Collector during the course of preparing the list of voters for the said election, is, whether society members like petitioners are eligible to be included in the list of voters and whether their exclusion from the preliminary list of voters by the Dist. Collector who is in charge of preparation of this list, is legal and valid.

5. The Dist. Collector has rejected the objections raised to the preliminary list of voters by petitioner society on the ground that the objections proceed on the basis that Rules relating to a notified society would by analogy apply to elections to specified societies. The

distinction made by the District Collector between two classes of Societies, according to Mr.Anturkar, overlooks section 27 of the Cooperative Societies Act, 1960 and more particularly Section 27(3A) which deals with eligibility of individual member of a society to vote and this provision provides for a period of two years.

6. In his submission, if the provisions of section 27 which deal with voting powers of members of cooperative societies are perused and more particularly proviso to sub-section 3 thereof, it would be apparent that upon investment of the sums in shares of federal society a new member society would be eligible to vote in the elections of the federal society and the period contemplated by proviso being three years from the date of investment, admittedly, the petitioners would be eligible to vote in the affairs of the federal society in question. He

contends that sub-section 3A would throw further light insofar as eligibility and participation in the electoral process because, although, it may be dealing with an individual member the intent and purpose is that such new member upon enrollment must be conferred voting power in the affairs of federal society. He submits that Rule 56-B which applies to Election to Notified societies and provisions of section 27(3A) fell for consideration of a Full Bench of this Court in the case of Sandip Vasantrao Lahare Vs. State of Maharashtra & Ors., reported in 2005 (2) All MR 489. He invites my attention to the questions framed for consideration by the Full Bench and thereafter conclusions in para 13 of the said decision on the said questions. He submits that as far as Question Nos. 1 and 2 are concerned they have been answered by Full Bench by holding that the date by which period of two years mentioned in section 27(3A) of the Act should be completed has to be the date on which the

elections become due on completion of the term of the Managing Committee. He submits that period of two years is to be counted from the date of enrollment when elections to the Managing Committee of society notified became due is the answer to the Question (i) and in his submission this conclusion of the Full Bench aptly applies to the issue at hand. Even if Rule 4(1) of Maharashtra Specified Coop.Societies Elections to Committee Rules 1971 may have to be read with section 27(3) and with proviso thereto it should be interpreted in the light of the the decision of the Full Bench and, therefore, the conclusion of the Dist.Collector is erroneous. All such society members who have admittedly completed three years from the date of their becoming members are entitled to vote and their names ought to have been included. In any event, in the light of Section 27(3A), atleast, two years period of enrolment should be taken as the basis and that is in consonance with the intent and

purpose of Rule 4(1).

7. It is difficult to accept this submission of Mr.Anturkar. It is not disputed that petitioners in this case either contributed or became members on 30th December 2002. The period of three years according to them would be over by 30th December 2005. Elections would have to be held upon the statutory period of five years of the board expiring from its elections, previously held i.e. 8th April 2001. In other words, it is not disputed that the period expires in 2006 and that is the date when the elections would be due. If this is not disputed and applicability of Section 27(3) and Rule 4 also not being disputed, then, plain mandate while preparing list of voters is that provisional list must include persons who have completed minimum period of two years as members from the date of their enrollment before 30th June of the year immediately preceding the year in which such

election is due. In the instant case, it is not also disputed that if the year of election is 2006, then list is to be with reference to the persons who complete two years as members before 30th June 2005. For this purpose, the authority had to go backwards naturally and that admittedly is done in this case. In other words, persons having completed two years from the date of their enrollment before 30th June 2005 have been included in the provisional list of voters. That would be 30th June 2003 in case of persons other than Society members. In case of society members, the authorities will have to follow Section 27(3) with its proviso, while preparing the voters list in the case of the subject society, which is admittedly a federal society. If provisional list of voters has to be prepared in accordance with provisions of Section 27(3) and Rule 4 and that list upon finalisation has to be operated for the purpose of elections to the specified society, then, it is not possible to

accept the contention that the said rules should operate in consonance with the mandate prescribed in case of a Notified society or should be on the lines provided for voting rights of individuals under section 27(3A). Once, identity and composition of these societies, namely, Notified and Specified is distinct and separate provisions for elections to specified societies have been incorporated in the Statute, then those provisions would govern the process right from preparation of voters list till the result thereof. Similarly, if the society is a Federal society and the member is not an individual but a society then mandate of Section 27(3) proviso also cannot be ignored. Therefore, the Dist.Collector has rightly observed that petitioners have not completed the statutory period of three years (Section 27(3) proviso) and only such member societies who have completed this period are eligible for being included in the provisional list of voters. He has not

determined any arbitrary cut-off date as alleged. He has included persons, other than member societies, enrolled on 30th June 2003 and in the case of member societies, consistent with the mandate of section 27(3) proviso, he has included such societies who complete three years period as on 30th June 2005 in the provisional list of voters. Admittedly, the specified society in this case is a Federal society.

8. It is not disputed that section 27(3) together with its proviso is applicable to a Federal society. However provisions pertaining to Elections of specified societies have to be construed along with Section 27(3) of the M.C.S.Act. If this mode is not adopted that would mean brushing aside and ignoring the substantive statutory provisions pertaining to voting rights of member societies of Specified Federal societies. The specified societies have special provisions pertaining to their elections

in this very statute. It is not the contention of Mr. Anturkar that the specified societies Rules are in any way conflicting with the substantive provisions of the Act and more particularly section 27(3). On the other hand, he makes alternate submissions by contending that the date in this case should be 8th April 2003. He chooses this date on the basis of the term of Board of Directors of the bank, which is five years. He contends that three years should be backwards from 8th April 2006. However, there is no such provision in the Election Rules. If such contention is accepted, rule 4(1) will have to be re-written which is impermissible. That Rule and Section 27(3) must be seen together and harmoniously in case of Federal society which is also a specified society. If that be the case, then, action of the Dist. Collector in rejecting objections of the petitioners cannot be faulted.

9. The Full Bench was considering the issue

of operation of Section 27 in the matter of voting powers of Notified society. Paras 9 and 10 of the Full Bench decision makes this aspect clear. The Full Bench notes that Section 27(3) deals with voting right of Member societies of a Federal society whereas section 27(3A) deals with individual member of society. It is thereafter in paras 11 and 12 that the Full Bench considers Rules pertaining to Elections to notified societies and observes that Rule 56B reflects provisions of section 27(3A) of the MCS Act. Thus, upon noticing this important aspect and the factual position that conclusions are summarised in para 13 of the Full Bench decision. The provisions considered and conclusion recorded cannot be applied, as contended, to the facts and circumstances of this case.

10. In the light of above, petitions are summarily dismissed.

(S.C.DHARMADHIKARI, J)